



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



264415

REPLY TO THE ATTENTION OF:

April 7, 2004

BY FAX

Ms. Johnine J. Brown
836 West Ancona Street
Chicago, Illinois 60622

Re: Request for Access
2424 Wisconsin Avenue, Downers Grove, Illinois

Dear Ms. Brown:

In response to the issues raised in your letter of April 7, 2004:

- 1) While the U.S. EPA will be paying for these actions initially, if it turns out that the owner is a potentially responsible party under CERCLA, U.S. EPA is legally entitled to seek reimbursement.
- 2) If the owner wishes to set a time limit on its consent it may certainly do so. U.S. EPA expects that the current sampling activity in the industrial park will be completed by the end of May, if not sooner.
- 3) As the document and the scope of work indicate, U.S. EPA and its contractor will coordinate with the owner to minimize inconvenience and disruption. To the extent the owner believes the U.S. EPA's activities have become unreasonable or are unduly interfering with operations, it may withdraw its consent at any time.
- 4) "Coordination of timing" is meant to provide flexibility. The sooner the owner provides consent and a point of contact, the more advance notice the Agency can provide. We currently expect to be ready to sample at the property as early as the end of next week. If the owner wants to add language expressing its understanding that it will receive a minimum of 24 hours advance notice, that would be acceptable.
- 5) The United States government is self-insured and its liability is generally governed by statutes such as the Federal Torts Claims Act. By longstanding policy and practice, U.S. EPA is unable to agree to provide indemnification or to accept other conditions on a grant of access. It would not be required to do so if it obtained access under its statutory authority rather than by consent. U.S. EPA's contractor, which will be conducting most of the on-site work, is required to carry liability

insurance.

6) If the owner wishes to add language expressing its understanding that the U.S. EPA will restore the property to its pre-existing condition to the extent practicable, that would be acceptable.

7) The consent document is unilateral. Therefore, the owner can terminate its consent to access at any time.

I have attached a revised consent to access document that is consistent with these comments and request that the property owner sign and return the document as soon as possible. If you have any remaining questions or concerns, please feel free to contact me at (312) 886-0562.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Krueger', written in a cursive style.

Thomas J. Krueger
Associate Regional Counsel

cc: Ross delRosario, U.S. EPA
Michael Caron, Block Caron & Lyon

CONSENT FOR ACCESS TO PROPERTY

Name: Wisconsin Avenue Property LLC

Address of Property: 2424 Wisconsin Avenue
Downers Grove, Illinois 60515

I consent to officers, employees, contractors, and authorized representatives of the United States Environmental Protection Agency (U.S. EPA) and the State of Illinois entering and having continued access to this property through May 30, 2004, for the following purposes:

Preparing for and conducting monitoring and sampling activity;

Preparing for and disposing of hazardous materials identified during sampling activity;

Performing other actions to investigate contamination on the property that U.S. EPA may determine to be necessary; and

Taking any response action to address any release or threatened release of a hazardous substance, pollutant or contaminant which U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

I realize that these actions taken by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

It is my understanding that the activities described above will be conducted consistent with the site management plan and sampling and analysis plan that have been provided to Wisconsin Avenue Property LLC. It is also my understanding that U.S. EPA and its contractors will coordinate the timing and locations of sampling and monitoring activities with Wisconsin Avenue Property LLC to, among other things, minimize disruption of operations at the property.

I further understand that pursuant to its policies, to the extent practicable, U.S. EPA will restore this property to the condition in which it existed prior to these activities.

This written permission is given by me voluntarily, on behalf of myself and all other co-owners of this property, with knowledge of my right to refuse and without threats or promises of any kind.

Date